

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MORGAN PERRY,	:	Case No. 3:17-cv-161
	:	
Plaintiff,	:	Judge Thomas M. Rose
	:	
v.	:	
	:	
KRIEGER BEARD SERVICES, LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ENTRY AND ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT (DOC. 52) AND TERMINATING
THE MOTION TO CERTIFY CLASS (DOC. 6), MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM (DOC. 22), MOTION TO STRIKE MOTION
TO CERTIFY CLASS (DOC. 23), MOTION TO DISMISS PLAINTIFF'S
COMPLAINT (DOC. 27), MOTION TO STRIKE REPLY TO RESPONSE TO
MOTION (DOC. 44) AND MOTION TO STRIKE REPLY TO RESPONSE TO
MOTION (DOC. 47) AS MOOT**

This case is before the Court on the Motion for Leave to File First Amended Complaint (“Motion for Leave”) (Doc. 52) filed by Plaintiff Morgan Perry. Plaintiff requests leave to amend his Complaint in order to add two individuals as plaintiffs and another individual as a defendant. Defendants DIRECTV, LLC (“DIRECTV”) and DirectSat USA, LLC (“DirectSat”) jointly filed a Response in Opposition (Doc. 53) to the Motion for Leave, as did Defendant Krieger Beard Services, LLC (“Krieger Beard”) (Doc. 54) shortly thereafter. Defendants argue that (1) Plaintiff failed to act with the due diligence required to obtain leave to amend, and (2) amending the Complaint would be futile because the proposed First Amended Complaint could not survive a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff filed a Reply (Doc. 55) to the Responses; this matter is therefore ripe for review.

Federal Rule of Civil Procedure 15(a)(2) provides that leave to amend should be “freely

given when justice so requires.” Fed. R. Civ. P. 15(a)(2). Leave to amend should be denied, however, “if the amendment is brought in bad faith, for dilatory purposes, results in undue delay or prejudice to the opposing party, or would be futile.” *Carson v. U.S. Office of Special Counsel*, 633 F.3d 487, 495 (6th Cir. 2011) (quoting *Crawford v. Roane*, 53 F.3d 750, 753 (6th Cir.1995)).

The Court finds that, in the interest of justice, leave to amend should be granted in this case. It would have been more expedient had Plaintiff filed the Motion for Leave earlier, but this case nonetheless remains in the pleading stage and no discovery has yet occurred. Plaintiff brought this case as a collective action under the Fair Labor Standards Act (“FLSA”) 29 U.S.C. §201, *et. seq.*, on behalf of himself and other similarly situated employees. Thus, Defendants were on notice that additional plaintiffs might opt-in to this action. Defendants also might have anticipated that Dustin Krieger, the additional defendant named in the First Amended Complaint, would be involved in this case because he is a part-owner of Defendant Krieger Beard.

The Court further finds that Plaintiff’s Motion for Leave does not fail on futility grounds. Plaintiff adequately alleges an employment relationship with each Defendant and alleges facts from which violations of the FLSA’s minimum wage and overtime provisions may be inferred. Defendants’ argument that Plaintiff must plead greater detail is not supported by the caselaw binding on this Court.

For the foregoing reasons, the Court **GRANTS** Plaintiff’s Motion for Leave (Doc. 52). Plaintiff shall file his First Amended Complaint within 7 days of this Order. In addition, the Court **TERMINATES** the following pending motions, which will be mooted by the filing of the First Amended Complaint:

- Plaintiff’s Motion to Certify Class (Doc. 6);
- Defendants DIRECTV and DirectSat’s Motion to Dismiss (Doc. 22);
- Defendants DIRECTV and DirectSat’s Motion to Strike (Doc. 23) the

Motion to Certify Class;

- Defendant Krieger Beard's Motion to Dismiss (Doc. 27);
- Defendants DIRECTV and DirectSat's Motion to Strike (Doc. 44) Reply to Response to Motion to Certify Class; and
- Defendant Krieger Beard's Motion to Strike (Doc. 47) Reply to Response to Motion to Certify Class.

DONE and **ORDERED** in Dayton, Ohio, this Monday, January 29, 2018.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE